IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 291 OF 2004

Cortalim Communidade Tenants' Association, represented by its Chairman, Shri Antonio Vaz, Cortalim, Goa. ..... Petitioner.

V/s.

1. The Communidade of Cortalim, represented by Attorney Dr. Peter Carvalho, Cortalim, Goa;

2. Shri Rosario D'Souza, major, r/o. Zambod, Cortalim, Goa;

3. Shri Shivram Naik, major, r/o. Nauta, Cortalim, Goa.

4. Joquim Vaz, major, r/o. Zambod, Cortalim – Goa;

5. Antonio Vaz, major, R/o. Anvalem, Cortalim, Goa. ..... Respondents.

Mr. Guru Shirodkar, Advocate for the petitioner.

Mr. Iftikhar A. Agha, Advocate for respondent No.1.

CORAM : B.H. MARLAPALLE, J.

DATE : 24TH SEPTEMBER, 2004.

P.C.:

Heard Mr. Shirodkar, the learned Counsel for the petitioner.

2. Regular Civil Suit No.48/94/D was moved by the Communidade of Cortalim against five tenants who were impleaded as defendants No.1 to 5 and defendant No.6 was the Sarpancha and the Administrator of Cortalim Communidade Tenants' Association. An application for temporary injunction was allowed. Thereafter, the present petitioner i.e. the Cortalim Communidade Tenants' Association made an application for being impleaded as defendant No.7 and it was accordingly impleaded. Defendant No.7 moved an application under Order 39 Rule 4 and prayed for vacating the interim order of temporary injunction. The learned Civil Judge, Jr. Division, at Vasco da Gama rejected the said application by his Order dated 24.10.2001. Thereafter, an appeal was filed i.e. Misc. Civil Appeal No.11/2002 which also came to be dismissed by the learned Addl. District Judge, South Goa, Margao by the impugned order.

3. Both the Courts below noted that even when the order of temporary injunction was passed, the present petitioner was represented by defendant No.6 who was its Administrator.

5. There was no hardship caused to the present petitioner by the temporary injunction and an opportunity was already granted to the

petitioner through its Administrator. The Courts below have, therefore, satisfied that the ingredients of the second proviso to Rule 4, Order 39 were not satisfied to invoke the discretionary power and vacate the order of temporary injunction.

6. The opinion recorded by both the Courts below cannot be termed as grossly erroneous, so as to call for interference at the hands of this Court in a writ petition under Article 227 of the Constitution. The petition is, therefore, rejected summarily.

B.H. MARLAPALLE, J.

ssm.